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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA for the use of  
NORTH STAR TERMINAL & STEVEDORE  
COMPANY, d/b/a Northern Stevedoring &  
Handling, and NORTH STAR TERMINAL &  
STEVEDORE COMPANY, d/b/a Northern  
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of  
SHORESIDE PETROLEUM, INC., d/b/a Marathon  
Fuel Services, and SHORESIDE PETROLEUM,  
INC., d/b/a Marathon Fuel Services, on its own  
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (TMB)

**MOTION TO STRIKE  
PORTION OF USE&G'S JUNE 2,  
2006 REPLY TO PLAINTIFFS'  
OPPOSITIONS TO USE&G'S  
MOTION FOR SUMMARY  
JUDGMENT ON PLAINTIFFS'  
BAD FAITH CLAIMS**

Plaintiff and Use Plaintiff North Star Terminal & Stevedore Company (“North Star”) moves to strike that part of the above-referenced Reply of defendant United States Fidelity & Guaranty Company (“USF&G”) wherein USF&G counsel attributes a quotation to Mr. Callow which was not a statement by Mr. Callow at all. *See* USF&G Reply, Clerk’s Docket No. 597 at pp. 6-7. *See also* Fed. R. of Civ. P. 12(f) (providing for striking any “immaterial, impertinent” matter). As demonstrated both in USF&G’s prior “bad faith” filing (Clerk’s Docket No. 502 at 11) and in North Star’s Opposition thereto (Clerk’s Docket No. 547 at pp. 31-32), the deposition testimony which USF&G quotes and attributes to expert William Grant Callow in its Reply was instead given at a separate, previous deposition of layman Jeff Bentz. Furthermore, that testimony was only given, over objection, when Mr. Viergutz pressed Mr. Bentz for his “personal understanding as a *layman*” of “bad faith nonpayment.” Clerk’s Docket No. 547 at pp. 31-32 (emphasis added). North Star has never characterized Mr. Bentz as an “expert” on the subject. *Id.* Instead, only USF&G has sought to do so, in error, which only confuses matters. *See* USF&G Motion, Clerk’s Docket No. 502 at pp. 10-12.

In addition to getting the witness wrong, USF&G takes the quoted passage out of context and misconstrues it. In its Reply USF&G deliberately cuts Mr. Bentz’s complete answer short to delete important content. His complete answer was “I believe that USF&G was probably fairly aware that there was a problem with their customer at the time that they were bonding Nugget because of the various correspondence that was going on, and they absolutely did nothing and I believe that was negligent.” *See* J. Bentz Depo. tr. p. 211, attached as Exhibit F to USF&G’s Memo. at Clerk’s Docket No. 502. From the full context of the questioning and answer which USF&G deletes it is evident that Mr. Bentz was *not* “speaking to the wisdom of USF&G

providing bonding to Nugget in the first place”, as USF&G misstates, but to the period “of the various correspondence” starting in July and August of 1997, meaning the claim letters and the correspondence between the U. S. Army Corps of Engineers, Nugget, USF&G and the various claimants, while USF&G was bonding Nugget. USF&G deliberately gives “bonding” a different meaning than did Mr. Bentz.

The limited basis of this motion to strike should not be construed as agreeing with any other portion of USF&G’s aforementioned Reply. Among other things, USF&G continues to quote a “double standard” passage from *Hillman v. Nationwide Mutual Fire Insurance Company, Inc.*, 855 P.2d 1321 (Alaska 1993), identified but ***not adopted*** by the Alaska Supreme Court in that decision. The troubling aspect is that USF&G persists in making that error ***even after*** it was shown to be in error in North Star’s Opposition and Cross-Motion at Clerk’s Docket No. 547 pp. 23-25 & No. 548.

USF&G also misstates the emphasized portion of the quotation it lifts from page 12 of that North Star Opposition. In addition, whereas USF&G represents in its Reply that its “fiduciary relationship” arguments in its initial memorandum “go totally unaddressed by Plaintiffs” (Clerk’s Docket No. 597 at 3), in fact North Star directly addressed them in its Opposition Memorandum, for example at pages 20-22. North Star also strongly disagrees with USF&G’s assertion that the plaintiffs have presented no admissible evidence to support their bad faith claims against USF&G, but that disagreement is addressed and supported in the record.

For the foregoing reasons, North Star requests that the above-referenced portion of USF&G's filing at Clerk's Docket No. 597 be stricken. Alternatively, the Court is requested to disregard it as clearly erroneous.

Respectfully submitted June 9, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2006, a copy of the foregoing was served electronically on:

Traeger Machetanz  
Steven J. Shamburek  
Paul Stockler  
Herbert A. Viergutz, and C.  
Patrick Stoll.

/s Michael W. Sewright